

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	CC Docket No. 01-92
	)	
Missoula Intercarrier Compensation	)	
Reform Plan	)	
	)	

COMMENTS OF THE  
NEW JERSEY BOARD OF PUBLIC UTILITIES

The New Jersey Board of Public Utilities (Board) submits the following comments in response to the Public Notice (Notice) released by the Federal Communications Commission (FCC or Commission) on February 16, 2007. In this Notice, the FCC seeks comment on amendments to the Missoula Plan (Plan) which was filed on July 24, 2006. On July 25, 2006, the FCC's Wireline Competition Bureau (WCB) released a Public Notice establishing a pleading cycle for comments on the Missoula Plan.<sup>1</sup> In response to a NARUC request for additional time, the pleading cycle on the Missoula Plan was extended so that comments were due on October 25, 2006 and reply comments were due on

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<sup>1</sup> See *Comment Sought on Missoula Intercarrier Compensation Reform Plan*, Public Notice, CC Docket No. 01-92, 21 FCC Rcd 8524 (WCB 2006). See 71 FR 45510.

December 11, 2006.<sup>2</sup> The reply comment due date was further extended to February 1, 2007 in response to another request from NARUC.<sup>3</sup>

Supporters of the Missoula plan include AT&T, BellSouth Corp., Cingular Wireless, Global Crossing, Level 3 Communications, Embarq, Windstream, and 336 members of the Rural Alliance, among others (Missoula Plan Supporters).<sup>4</sup> The proposed amendments, referred to as the Federal Benchmark Mechanism (FBM), were described in an ex parte letter filed January 30, 2007, and corrected by another filing on February 5, 2007. This ex parte letter was filed by the Chairman of the Wyoming Public Service Commission, staff members from four other state commissions, and the Missoula Plan Supporters.<sup>5</sup> The amendments incorporate a proposal addressing issues faced by “early adopter” states, i.e. defined in the letter as states that have already taken steps to substantially reduce intrastate access rates. The signatories to this ex parte letter assert that the proposed amendments to the Missoula Plan are a significant step in the direction of a more fair and balanced approach to addressing a critical problem the original Missoula Plan filing failed to address.

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<sup>2</sup> See, *Developing a Unified Intercarrier Compensation Regime*, Order, CC Docket No. 01-92, 21 FCC Rcd 9772 (WCB Aug. 29, 2006). See 71 FR 54008.

<sup>3</sup> See, *Developing a Unified Intercarrier Compensation Regime*, Order, CC Docket No. 01-92, DA 06- 2577 (WCB Dec. 22, 2006). See 72 FR 2249.

<sup>4</sup> See Missoula Plan July 24 Ex Parte Letter. See also *id.*, Attach. (providing a complete list of supporters).

<sup>5</sup> See Letter from Peter Bluhm, Esq., Vermont Public Service Board; Christopher Campbell, Telecommunications Director, Vermont Department of Public Service; Steve Furtney, Chairman, Wyoming Public Service Commission; Angela DuVall Melton, Esq., Nebraska Public Service Commission; Joel Shifman, Esq., Maine Public Utilities Commission; Joseph Sutherland, Executive Director, Indiana State Regulatory Commission; and the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed January 30, 2007).

FOR THE REASONS SET FORTH BELOW, THE BOARD CONTINUES TO  
OPPOSE THE MISSOULA PLAN AND THE PROPOSED AMENDMENT FILED  
ON JANUARY 30, 2007.

### COMMENTS

This Board has stated its unequivocal opposition to the Missoula Plan in our initial and reply comments in this docket as well as a signatory to joint comments submitted by the majority of the member states of the Mid-Atlantic Conference of Regulatory Utility Commissioners (MACRUC). The proposed amendment that was filed on January 30, 2007 does nothing to make the Missoula Plan more equitable, in fact it makes the outcome worse for current donor states. This proposed amendment is nothing more than a self-serving attempt to increase the current unsustainable subsidy flow from the end-users in net contributor states to consumers and carriers in more rural states. The proponents own words confirm that this proposal is not equitable, despite their alleged attempt to create equity between states. The cover letter states, “the [Federal Benchmark] Mechanism reduces the burden on early adopter states by shifting more revenue recovery from the Missoula Plan’s Restructure Mechanism to end-user rates in states that have retained low end-user rates.”

The FCC should reject the amendment and the entire Missoula Plan for a multitude of reasons, many of which are listed below:

- As this Board and several other commenters have previously stated, the Missoula Plan is not a consensus plan. Twenty-Five states filed initial comments, either individually or jointly, expressing concerns about the Plan. The January 30<sup>th</sup> proposed amendment was filed by five state commissions, hardly a representative number of states.
- This Board described in detail in our previous comments how the Missoula Plan would dramatically increase the already unsustainable Federal Universal Service Fund (USF) and exacerbate the net contributor status of our ratepayers. The amendment as described in the letter as “new federal support” and “supplemental funding” would increase the cost of the Plan by an additional \$600 million with states like New Jersey being ineligible to receive the majority of the funds.
- Therefore, the original increase of \$2.225 billion in the Federal USF under the Missoula Plan has now been increased by the proposed amendment, to \$2.744 billion, which would elevate the Federal USF to nearly \$10 billion. At a time when the FCC Commissioners,<sup>6</sup> members of the

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<sup>6</sup> “ [I]ncreases in the number of carriers who are receiving universal service support have ballooned, placing significant pressure on the stability of the fund.” . . . “In 2000, CETC’s received \$1 million in support ... we anticipate CETC’s received almost \$1 billion in 2006.”. . . “[O]ur current high cost mechanism is in need of repair and revision. The current trajectory is unsustainable.” Opening Remarks of FCC Chairman Kevin Martin at the *Federal-State Joint Board on Universal Service En Banc Meeting*, Washington D.C., February 20, 2007.

“[W]e recognize how technological changes are putting strains on the mechanics of our contribution and distribution systems which must be addressed by policies that avoid

Federal-State Joint Board on Universal Service<sup>7</sup> and members of Congress have expressed concern on the sustainability and the level of growth of the existing \$7 billion fund, the Missoula Plan and proposed amendment cannot be justified and should be rejected.

- The proposed amendment contains no discussion of where these additional funds will come from (i.e. no state-by-state impact analysis) and there is absolutely no justification for any calculations contained therein. The proposed “High Benchmark Target” and “Low Benchmark Target” rates of \$25 and \$20 respectively, have no justification and the proponents apparently just decided that they were appropriate. In addition, the calculations were developed by the proponents with little or no ability for affected states such as New Jersey to verify the results. In fact when asked for detail, Board Staff was told certain information would not be supplied.
- The calculations that estimate “net benefit” to residential customers is so vilely flawed it should be rejected. Not only are the calculations completely void of any back-up or justification, it only shows alleged

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subjecting the program to unsustainable growth.” *Hearings on Universal Service Before the Senate Comm. on Commerce, Science, and Transp.*, 110<sup>th</sup> Cong. (March 1, 2007) (comments of FCC Commissioner Deborah Taylor Tate).

<sup>7</sup> “I will limit my remarks about the important issue of the significant growth in the size of the high cost funds. I share the opinion of my colleagues on the need for a cap on expenditures to give us breathing room to address the issues in a more comprehensive way. It is critically important to the sustainability of the program and to its continued place on the public policy agenda. Chairman Martin has spoken to this issue forcefully and my Federal and state colleagues have addressed and will address that issue here today.” *Hearings on Universal Service Before the Senate Comm. on Commerce, Science, and Transp.*, 110<sup>th</sup> Cong. (March 1, 2007) (comments of Comm’r Larry Landis, Ind. Util. Regulatory Comm’n, Member, Federal-State Joint Board on Universal Service).

disbursements of funds, not where they came from. The impact on net contributor states such as New Jersey is not even calculated. In addition, virtually every residential customer will see a significant increase in the Subscriber Line Charge (SLC) by as much as \$3.50 per month (more than a 50% increase). At a minimum, this amount should be subtracted from any net benefit analysis, yet this significant increase is not even part of the calculation.

- Finally with respect to this “net benefit” chart, another serious flaw renders the analysis useless. A number of states in their initial comments question the assumption by the Missoula Plan proponents that access reductions will flow in their entirety to residential consumers. This appears to continue to be included in the analysis and is a fatal assumption that has no factual basis and renders the analysis of little or no value.
- Unless and until the calculations presented with the proposed amendment can be tested and verified by state commissions and consumer advocates, as well as the FCC, they should be rejected. The process has been anything but transparent and the results should be given no weight.
- The early adopter states suggest that the amendment is necessary because customers in states that have reduced intrastate access charges and established an intrastate USF or increased local rates would have to shoulder a “disproportionate” share of the Restructure Mechanism. The proposal states that, “at the same time, customers in these states will be required to help pay for the recovery of intrastate access revenue

reductions in states that were not early adopters.” The proposal however, places that very same burden which they are seeking to avoid on net contributor states like New Jersey - - forcing New Jersey ratepayers to subsidize the high rates in other states. Not only is this discriminatory and flawed public policy, there is no detailed proof in the proposal that the benchmark rates have any justification or even that the rate levels are the result of reduced intrastate access charges. The proposal itself makes many unsubstantiated claims such as, “states that have the highest end-user rates, many of which are the result of early state initiatives to reduce switched access rates” and “such states presumably have allowed carriers to raise end-user rates.” However, no analysis is provided that shows a definitive link between the level of basic local rates and reduced intrastate access charges. Based upon the fact that states have used a number of different approaches to set local rates which include a host of variables, it is obvious there is no such verified correlation.

- As described above, this proposed amendment makes the Missoula Plan considerably worse for New Jersey and at least five other states that would be negatively affected by the so-called “Low Rate Adjustment.” Without justification or even a description of its calculation, the proponents have determined that consumers in these six states - - Alabama, Florida, Missouri, New Hampshire, New Jersey and Tennessee - - are not only subject to the 50% plus increase in the SLC, but potentially an even greater SLC increase since the combination of our local rates and the

increased SLC do not reach the proponents arbitrary \$20 “Low Rate Benchmark.” It appears - - again when asked, the proponents declined to provide specifics to this calculation - - that the public policy decisions by this Board and the combination of actions taken over the last 20 years - - which includes significant intrastate access charge reductions - - to ensure just and reasonable rates for residential consumers, do not comport with the proponents definition of “early adopter” or “access parity,” and we have been penalized for that perceived non-conformance. As argued previously, the Missoula Plan’s attempt to shift carrier-to-carrier payments to end-users through substantial SLC and USF payments is inappropriate. This proposed amendment not only exacerbates that inappropriate shift, it is also endorsed by a small number of states that stand to benefit at the expense of consumers in New Jersey and these five other states. Again, we strongly emphasize that this must be rejected.

### **CONCLUSION**

The January 30, 2007 proposed amendment does nothing to address the myriad of problems with the Missoula Plan as filed. The Missoula Plan and the proposed amendment shift the cost of intercarrier compensation to end-users, specifically consumers in net contributor states. The plan not only continues the inappropriate subsidy plan from urban to rural states, it increases the subsidy by

some 35% at a time when it should be capped and reduced.<sup>8</sup> This Board concurs with the Pennsylvania Public Utility Commission's (PaPUC) reply comments submitted to the FCC on February 1, 2007:

"The PaPUC is concerned because states in our Middle Atlantic region, and Pennsylvania in particular, pay far more into current universal service programs than they receive in net benefits. The Missoula Plan aggravates that reality by advocating a reform that provides revenue assurances to incumbent carriers in response to competitive changes by imposing more costs on Pennsylvania's end-users."

"The PaPUC questions the need to create an access revenue insurance fund for rural carriers that is supported almost exclusively from an assessment on consumers in net contributor states. The PaPUC is also concerned about the ability to ensure that any reforms are actually passed through to consumers in the form of lower calling rates in response to reformed interstate access rates."

At a time when the FCC Commissioners and members of the Joint Board on Universal Service have indicated that the current USF growth is unsustainable and time is of the essence to reform this worthwhile public policy goal, the

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<sup>8</sup> As argued by this Board in our comments to the FCC regarding the use of reverse auctions, the high cost portion of the fund needs to be capped and reverse auctions are appropriate if there are a limited number of auction "winners." *See, In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337 (rel. August 11, 2006).

Missoula Plan as filed and amended on January 30, 2007, will certainly cause the USF to collapse and much needed funds will not be available to any consumers. The FCC must, therefore, reject the Missoula Plan and the January 30, 2007 proposed amendment in its entirety.

Respectfully submitted,

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DATED: March 19, 2007

/s/  
JEANNE M. FOX  
PRESIDENT

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